REMARKS

Reconsideration of this application is respectfully requested. To this end, petition is hereby made for a two-month extension of time for responding to the outstanding Office Action. A Request for Continued Examination is also being filed with this Amendment.

Claims 1-4, 7-11, 15, 17, 18 and 23 are pending in the application. Upon entry of this Amendment, claims 1, 7, 9 and 23 will be amended and new claim 24 will be added. Support for the amendments to independent claims 1 and 23 appears at least at pages 7 and 8 of the application specification and Figures 6a and 7 of the application drawings. The Examiner is thanked for interviewing this application with the undersigned and the undersigned's Canadian associate, Ibrahim Tamer, on February 23, 2007. The remarks set forth below, in essence, constitute the substance of the interview with the Examiner.

In the outstanding Office Action of October 10, 2006, the Examiner rejected, under 35 U.S.C. §102(b), claims 1-4, 7-11, 15, 17, and 18 as being anticipated by Allen (USP 5,256,007), and claim 23 as being anticipated by Curtis(USP 1,537,588). The Examiner's rejections are respectfully traversed.

For a claimed invention to be anticipated by a prior art reference, every element of the claim must be disclosed in the reference. Here, the claimed invention of the present application is not anticipated the cited Allen and/or Curtis references because such references do not disclose or suggest the limitations recited in the amended claims now being submitted.

Each of independent claims 1 and 23 of the present application describes an air gap spacer for providing spacing between an outer wall surface of a building under construction and an exterior cladding material.

Claims 1 and 23 have been amended to clarify that the spacer's planar surface is comprised of a plurality of interconnected matter surface areas and a plurality of apertures between the matter surface areas. Claims 1 and 23 have also been amended to clarify that a plurality of protrusions protrude from only one side of the matter surface areas so that when the spacer is in place, liquid and air may pass through channels formed between the protrusions. Claim 1 has been further amended to clarify that portions of the matter surface areas corresponding to the protrusions' bases are un-apertured on another side of the matter surface areas opposite the protrusions and that the plurality of aperture surface areas aggregately comprise a substantially greater potion of the planar surface's total area than the matter surface areas aggregately comprise.

Dependent claims 7 and 9 have been amended to conform the language of such claims to that of independent claim 1 from which they depend.

Neither Allen nor Curtis disclose or suggest the foregoing features recited in amended independent claims 1 and 23 of the present application, and thus, neither of these references anticipate such claims.

Allen discloses a ground support system for providing a stabilizing surface in conjunction with loose soil or other materials, such as sand or wood shavings, that may be used in agricultural applications, such as where horses, cows or bulls and the like are

kept. The support system comprises a number of interlockable planar sheets, each planar sheet including a number of conical projections, which begin on its top side and extend past its bottom side. The conical projections are hollow and may be open-ended and, in combination with apertures defined in the planar sheet, permit fluids to pass through the sheets. The design and construction of Allen's ground support system is best seen in Figures 1-3 of Allen.

Figures 1-3 show a sheet 10 disposed between an upper loose soil layer 12 and a lower soil layer 14. The sheet 10 has a top side 16 and a bottom side 18. Depending from the bottom side 18 are a plurality of conically-shaped projections 20, which are wider at their attachment point with the bottom side 18 than at their far ends. Because it is important that the sheet 10 permit the passage of water and waste liquid through the sheet 10, a plurality of apertures 22 are defined in the sheet to provide free flow of the of water and waste liquid. In addition, each far end 23 of the projections 20 is open to also enhance fluid flow. Figure 4 of Allen shows an anchor 30 that is used to fix the sheet 10 to the lower soil layer 14, as seen in Figure 5 of Allen. The anchor 30 is comprised of an anchor stem 32, a conical plug 34, and a stop ring 36. *See* Allen, col. 3, ln. 62 to col. 4, ln. 57.

Based upon an overall understanding of the subject matter described by Allen, the provision of the projections 20 having at least one open end on the surface of the sheet 10, is aimed at anchoring the sheet in the ground, whereby, when sand fills the

projections 20, the sheet will stabilize in the ground further, and the shape of the projections is aimed at simplifying the installation of the sheet in place.

Thus, clearly Allen's ground support system does not include any protrusions protruding from only one side of matter surface areas that are part of a planar surface, as recited in amended claims 1 and 23, and do not permit any fluid to pass through them. Allen's ground support system also does not include portions of matter surface areas corresponding to protrusions' bases that are un-apertured on another side of the matter surface areas opposite the protrusions, as also recited in amended claim 1. Allen's protrusions 20 are clearly described and illustrated as being hollow with an opening that extends through both the top side 16 and the bottom side 18 of the planar sheet 10. Allen also suggested the provision of openings at the apexes of the projections 20 (Col.4, lines 14 to 22) in order to enhance the flow of fluid there through. The latter supports the Applicant's position that Allen's ground support system does not include portions of matter surface areas corresponding to protrusions' bases that are un-apertured on another side of the matter surface areas opposite the protrusions.

Additionally, Allen's ground support system does not include large aperture surface areas between matter surface areas, with the aperture surface areas aggregately comprising a greater potion of the planar surface's total area than the matter surface areas aggregately comprise, as recited in amended independent claim 1.

That Allen's ground support system does not include large aperture surface areas between matter surface areas, with the aperture surface areas aggregately comprising a

greater potion of the planar surface's total area than the matter surface areas aggregately comprise, is clear from Figures 1 and 2 of Allen.

This conclusion is further buttressed by Allen's teaching that traction on the upper surface of the sheet 10 is provided by either scoring the upper surface of the sheet 10 or by adhering ground material thereto. A planar surface include large aperture surface areas between matter surface areas, with the aperture surface areas aggregately comprising a substantially greater potion of the planar surface's total area than the matter surface areas aggregately comprise, such as the embodiment shown in Figures 5(a) and 7 of the present application would not have sufficient "matter surface area" to provide the area for scoring or for adhering ground material taught by Allen to provide the desired traction.

Thus, Allen dose not, as argued by the Examiner, anticipate amended independent claim 1 or dependent claims 3-4, 7-11, 15, 17 and 18, which depend directly or indirectly from claim 1.

Turning to the Examiner's rejection of claim 23 under 35 U.S.C. §102(b) as being anticipated by Curtis, the level of detail provided in the Curtis reference, whether in the description or in the drawings, is not believed to describe or suggest all the features defined in claim 23.

The longitudinal ribs 12 and 12a do not protrude from only one side of a matter surface area as recited in amended independent claim 23. The Examiner's attention is respectfully directed to Figures 7, 8, 9, 10 and 13 of Curtis, each of which illustrates that

the grooved longitudinal stay portions 12 and 12a extend **through** both sides of the open meshes 13 of the metal lath. The longitudinal stay portions 12 and 12a do not extend from one side of the surface, but seem to be placed adjacent to the surface when on the edge (stay portion 12a), or in between two surfaces when in the middle (stay portion 12).

Independent claim 23 has been amended to recite that the protrusions extend from only one side of the matter surface areas. In this arrangement, the protrusions are positioned or provided on top of or underneath (depending on the orientation of the air gap spacer) one side of the matter surface areas. This arrangement is different from the stay portions 12 and 12a of Curtis, which are positioned to the side of the open meshes 13 of Curtis extending between stay portions 12 and 12a, and which pass through any plane formed by such open meshes 13.

Independent claim 23 has also been amended to recite that the protrusions have a shape selected from the group consisting of: pyramidal, flat topped pyramidal, conical, flat topped conical, rectangular based pyramid, cuboid and rectangular block. Here again, the shape of the protrusions is different from the stay portions 12 and 12a of Curtis, which are v-shaped longitudinal grooves.

By amending claim 23 to describe the shape of the protrusions and to recite that the protrusions protrude from only one side of the matter surface area, Applicant contends that amended claim 23 now clearly distinguishes over the Curtis reference.

Applicant also notes that the Curtis reference was granted more than 82 years ago, and that since that date the requirements of the construction industry and the National

Building Codes have changed tremendously (*e.g.*, a 10 mm space is now required between the outer wall and the cladding), making the use of the metal lath of Curtis as an air gap spacer impossible, due to the weight of the metal needed, and the cost of the material and the manufacturing costs involved in grooving the metal and the longitudinal ribs, in addition to the force needed for stretching the lath and cutting it.

In addition, Applicant notes that the provision of the parallel and spaced longitudinal grooved stay portions 12 and 12a of Curtis do not efficiently solve the problem addressed by the present invention for at least three reasons.

First, the pressure that would be placed on the grooved longitudinal stay portions 12 and 12a of Curtis, will flatten the channel formed therein, thereby reducing the height or thickness of the stay portions 12 and 12a and make the device ineffective as a spacer. In contrast, positioning the protrusions on matter surface areas of a planar surface, as recited in claim 23, provides a stronger construction that can bear heavier loads.

Second, the pressure placed on the stay portions 12 and 12a due to climate change, will be not be equally distributed unless the stay portions 12 and 12a are located at very short distances from each other. This change in construction would substantially increase the weight and the costs of manufacturing the lath of Curtis.

Third, when the metal lath of Curtis is placed between the outer wall and the cladding, the orientation of the longitudinal the stay portions 12 and 12a would have to be perpendicular to the ground. This orientation would serve to prevent rain and humidity from accumulating in horizontal spaces that would be formed by the longitudinal, parallel

and continuous stay portions 12 and 12a where the metal lath is applied with a horizontal orientation. Where the metal lath is applied with a horizontal orientation, ultimately, the moisture trapped in the horizontal spaces would migrate into the outer wall surface of a building.

If the metal lath of Curtis is applied with a vertical orientation, there is a risk of rain and humidity accumulating in vertically orientated spaces above window and doors. Such an accumulation of moisture could result from the manner in which the lath would have to be cut for the windows and doors and then applied to the outer wall surface of a building because of the continuous structure of the longitudinal stay portions 12 and 12a which would not allow any circulation of air between adjacent vertical spaces formed by the longitudinal stay portions 12 and 12a. Here again, ultimately, the moisture trapped in the vertical spaces above window and doors would migrate into the outer wall surface of a building.

Thus, Curtis does not, as argued by the Examiner, anticipate amended independent claim 23.

In view of the foregoing, it is believed that all of the claims pending in the application, *i.e.*, claims 1-4, 7-11, 15, 17, 18, 23 and 24 are now in condition for

allowance, which action is earnestly solicited. If any issues remain in this application, the Examiner is urged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: Robert A. Molan

Robert A. Molan
Reg. No. 29,834

RAM:drt
901 North Glebe Road, 11th Floor
Arlington, VA 22203
Telephone: (703) 816-4000
Facsimile: (703) 816-4100